

**Before The
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

**Revision of the Commission's Rules To
Ensure Compatibility With Enhanced 911
(E911) Emergency Calling Systems**

CC Docket 94-102

To: Wireless Telecommunications Bureau

**REQUEST FOR A LIMITED
WAIVER AND EXTENSION OF THE COMMISSION'S PHASE II E911 RULES**

N.E. Colorado Cellular, Inc. ("NECCI"), NECO PCS, Inc. ("NECO") and Wireless II, LLC ("Wireless II") (collectively, the "Carriers"),¹ pursuant to 47 C.F.R. § 1.925, hereby requests a limited waiver and two-year extension of certain of the Phase II enhanced 911 (E911) requirements set forth in 47 C.F.R. § 20.18. As set forth below, based on the unique and unusual circumstances, strict application of the Phase II E911 rules would be inequitable and unduly burdensome to the Carriers. Further, grant of the limited waiver and extension request would serve the public interest.

¹ The parties are filing a joint waiver since they are affiliates under common control.

Background

The Carriers are “Tier III Carriers” as defined by the Commission’s rules.³ They are licensed to operate cellular and Broadband PCS systems in rural portions of Nebraska and Colorado.⁴ In Colorado, NECCI currently operates on AMPS network. As such, the only possible E911 solution is network-based. For the Nebraska PCS licenses held by Wireless II, the Carriers currently operate on a CDMA network within their licensed service area. They have previously indicated that they would utilize a handset-based E911 solution on the spectrum of which they currently provide commercial service. However, the Carriers plan to remove the CDMA system by the end of 2003 and install a GSM network.

As the Commission is aware, the wireless industry has been divided regarding the choice of technology in recent years as carriers transitioned to digital service. The enacting of the sunset provision for AMP services has helped fuel this transition. For small carriers, it has meant trying to respond and survive an industry and government driven investment in digital technology with a mandated timeline for implementation. At the same time, the government has determined that Wireless Local Number Portability, CALEA, and E911 Phase II service should also be implemented and operated at a consistent level nationwide. This has imposed a tremendous challenge on the small wireless carrier; especially those providing service in rural area.

³ Tier II Carriers were defined as all other non-nationwide carriers. See Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Order to Stay (rel. July 26, 2002) (E911 Small Carriers Order).

⁴ NECCI operates in rural portions of Colorado. In addition, through its wholly-owned subsidiary, NECO, NECCI recently acquired control of Wireless II, which holds Broadband PCS licenses in rural Nebraska. NECO also recently acquired Broadband PCS spectrum in rural Nebraska from AT&T Wireless. See attached Exhibit for the Call Signs subject to this waiver and extension request.

In order to remain competitive, the Carriers have been expanding their service area while implementing a digital network. The Carriers have determined that the expanded territory will support a revenue stream that is necessary to support future technological improvements, competitive change, and government security mandates. The Carriers believe that the digital technology will allow them to provide a competitive local product and develop contractual relationships with large carriers outside our local service area. While the Carriers implement this change, it is necessary for them to work with the Commission to obtain an E911 Phase II plan that is operationally acceptable and financially affordable.

Unlike small carriers, larger carriers can implement very cost effective Phase II network-based or handset-based solutions and become compliant by simply directing resources to the large metropolitan areas while ignoring the rural subscriber. The Carriers, however, cannot cross-subsidize in order to implement government mandates in rural areas for the following reasons: (1) they do not have large metropolitan markets where the 911 services can be centered. Rather, they must implement E911 service throughout their rural service area; (2) they have a confined market with borders that are restricted, as to signal strength and coverage with respect to its towers along the service area borders (with border areas being a larger percentage of the small markets total coverage area than large carriers, it is difficult to satisfy the Commission's operational standards); (3) NECCI currently operates on an AMPS network in Colorado, and its only solution is a network based solution; (4) the Carriers utilize a Motorola switch that has met minimal mandated 911 Phase II interface standards. As such, the Carriers have only one vendor to choose from: True Position. The cost per site of the True Position solution (about \$20,000) is more expensive than the base station site equipment currently installed. Further, the True Position/Motorola solution does not allow for location rebids without ending the call and

resending the call to the PSAP. The Carriers believe that this is a significant design deficiency and jeopardizes E911 calls while a subscriber is moving. To upgrade to digital service for the purpose of fulfilling E911 Phase II has an inherent weakness in not covering the territory in as strong a signal as AMPS. Thus, more towers are required for a network-based solution if the Commission's strict accuracy requirements are to be met. If a handset solution is chosen, the subscriber reduces the area in which Phase II service will work. Even though you may have 100% GPS handsets, you will have a large percentage of calls coming in as Phase I anyway.

The Carriers are concerned about the safety of the individuals they serve because as a small, rural carrier, their customers are not only customers but they are their neighbors, friends, family and co-workers. However, the Carriers also realize that without an amended E911 implementation schedule, the result will be a "death warrant" for a company that has a history of providing quality service in rural areas.

Relief Sought

The Carriers have not yet received Phase II requests from any of the PSAPs in their service areas. Nonetheless, as set forth below, they request a two-year extension in implementing Phase II E911 service .

Discussion

As a general matter, a waiver is appropriate whenever special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.¹¹ The

⁵ See HCI's E911 Phase II Report on file with the Commission.

⁶ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Third Report and Order*, 14 FCC Rcd 17,388, 17,390-91 (1999).

⁷ 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D. C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D. C. Cir. 1969)).

⁸ *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442, 17457-58, paras. 43-44 (2000) (*E911 Fourth Memorandum Opinion and Order*).

⁹ *E911 Fourth Memorandum Opinion and Order*, 15 FCC Rcd at 17458, para. 44.

Commission has established standards to be used when acting upon requests for a waiver of E911 deadlines and obligations.¹² The Commission has held that it will grant waiver requests that are specific, focused, and limited in scope, with a clear path to full compliance.¹³ Further, carriers should undertake concrete steps necessary to come as close as possible to full compliance and should document their efforts aimed at compliance in support of any waiver request.¹⁴

The circumstances surrounding the Carriers waiver and extension request are “unique and unusual.” Because of their business decision to transition to a GSM network in order to accommodate its larger, more financially secure roaming partners, the Carriers were forced to re-evaluate its Phase II E911 solutions. A circumstance beyond the control of the Carriers. Further, as small, rural wireless carriers that do not have access to the same financial markets available to the larger carriers, the Carriers must first focus their financial resources on completing their GSM network. Especially when considering the Carriers recent acquisition of contiguous spectrum in Nebraska. Hence, the Carriers are not in a financial position to undertake both the construction of a GSM network and the installation of a Phase II E911 solution; an onerous process which would require, at the very least, a substantial amount of additional cell sites given the rural nature of its markets. Should they employ a network-based solution, which is their only option at this time since there are no Phase II capable handsets for use on GSM networks. The costs of implementing a network-based Phase II solution is extraordinarily burdensome for a

¹⁰ *Id.*

¹¹ 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D. C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D. C. Cir. 1969)).

¹² *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442, 17457-58, paras. 43-44 (2000) (*E911 Fourth Memorandum Opinion and Order*).

¹³ *E911 Fourth Memorandum Opinion and Order*, 15 FCC Rcd at 17458, para. 44.

¹⁴ *Id.*

small, rural carrier. Hence, requiring the Carriers to strictly comply with the Phase II E911 rules would result in a severe financial strain and jeopardize them as an on-going concern.

Specifically, in their Colorado service area, the Carriers have chosen to install a GSM digital system in order to maintain its current business relationships with AT&T Wireless and Cingular Wireless. These two carriers represent a majority of the Carriers' roaming revenue in Colorado. As such, the GSM technology choice was the only viable option. Unfortunately, the transition to GSM has meant that the implementation of GSM has restricted the Carriers ability to provide E911 Phase II in the early stages of its transition to GSM.

NECCI has a Motorola AMPS system with 25,000 subscribers that will be gradually transitioned to GSM digital service. GSM and AMPS are not compatible, except for use by poor functioning and highly expensive GAIT phones. Hence, the Carriers will have to ultimately replace all handsets used by its current AMPS subscribers with GSM handsets. The Carriers can not afford a Phase II solution with respect to its AMPS network solution and then be forced to switch at a later date to a handset solution. Not only would any investment towards its AMPS system, which is being disbanded by NECCI, be deemed a "lost investment," but the costs to replace handsets on two different occasions could cost as much as \$7,000,000. Such a Commission mandate would be unduly burdensome and not serve the public interest.

In Nebraska, the Carriers recent spectrum acquisitions now provides them with a contiguous service area that covers 70,000 square miles and 800,000 persons. Its commitment to the rural Nebraska is to provide end to end coverage in their service area within a short period of time. The Carriers believe that in order to obtain a safe wireless environment in rural America, it is critical that you have end to end coverage, as the Carriers have done in northeast Colorado. To be able to dial 911 in a Phase I mode, where today there is no signal/coverage, is just as

important as dialing 911 in a Phase II mode from some locations. This end result clearly serves the public interest and will not cause harm to their subscribers as Phase I E911 service will be available.

In addition, the Carriers will continue to build-out along the interstate highways (I-76 and I-80) in the territories it serves during 2003 and gradually will expand to the entire market during the next several years. As a small carrier, the Carriers do not have the resources to proceed any faster. In Colorado, the towers will share AMPS and GSM coverage. In Nebraska, there will be minimal coverage initially and the towers will be GSM only. For a network-based solution to be employed, especially within current Commission operating standards, a carrier must be capable of superior triangulation of coordinates. A spine of sites up and down the interstate does not permit triangulation. Thus, a network-based solution will not be obtainable in the Carriers' Nebraska service area until sufficient towers are installed to allow for triangulation. The earliest the Carriers anticipate employing Phase II service to Nebraska with reasonable accuracy data is 2005.

As the Commission is well aware, there are currently no GPS, GSM, dual mode (850/1900) handsets available for purchase. The primary reason is that the major carriers have not demanded the product and small rural carriers have little influence on product development. Large carriers have not chosen to influence or press for a solution for this technology and as such, all that exists today is a network solution for GSM. A handset solution that would be available to a small carrier is not expected before the end of 2004. Hence, the Carriers cannot implement GSM handset technology at this time because GSM location-capable handsets are not commercially available. Therefore, the Commission's September 1, 2003 "selling and activating location-capable handsets" requirement simply cannot be met.

Within five years, the Carriers expect its GSM subscriber base to grow to 100,000 subscribers. Therefore, it is essential for the Commission to allow them to grow its company in the next few years so that they can implement an E911 Phase II solution that is here for the longhaul.

Schedule for Compliance

The Carriers propose the following E911 implementation schedule: a two-year delay in implementing any Phase II technology to allow the Carriers to determine which Phase II solution is best suited for their network and service area. The Carriers will provide Phase I E-911 to as much of its service area as possible. In the alternative, the Carriers propose to implement a network solution in northeast Colorado for their GSM and AMPS systems within six months of a valid PSAP request. However, the network solution accuracy and reliability standards will be reduced to delivering to the PSAP only fifty percent of the calls and would be location capable within 500 meters. In Nebraska, the Carriers alternative proposal would be to implement a network or handset solution by January, 2005. If a network solution is chosen the same accuracy and reliability standards as described above will apply. If a handset solution is chosen, the Carriers propose that it will begin selling and activating ALI-capable handsets by January 1, 2005 and proceed with a two year delayed schedule consistent with the FCC mandated rollout schedule for handsets. Hence, by January 1, 2007, the Carriers will have 95 percent penetration of location-capable handsets.

Conclusion

A waiver and extension of the Commission's E911 rules will permit the Carriers to effectively install a quality E911 Phase II system in rural Colorado and Nebraska. The proposed implementation schedule is consistent with the Carrier's GSM build-out plans. Further, the costs

associated with its proposed E911 implementation and the proposed accuracy standards will not be overly burdensome to the Carriers. Meanwhile, the Commission's Public Interest mandate will be met as the Carriers will offer Phase I service in areas that were otherwise unserved. Therefore, grant of a limited waiver of the Commission's Phase II E911 rules will serve the public interest.

Respectfully submitted,

N.E COLORADO CELLULAR, INC., NECO
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_____/s_____
David A. LaFuria
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September 5, 2003

CALL SIGNS

Licensee	Call Signs
N.E. Colorado Cellular, Inc.	KNKN327, KNKR307, WPON202, WPON203, WPWR976 & WPWR977
Wireless II, LLC	KNLF942, KNLG250, KNLG845, KNLG964, WPOJ836 & WPOJ837
NECO PCS, Inc.	WPXF279, WPXF280, WPXF281, WPXF282, WPXF283 & WPXF284

DECLARATION OF LARRY AISENBREY

I, Larry Aisenbrey, declare under penalty of perjury that the foregoing is true and correct.

1. I am the Vice President of Operations of N.E. Colorado Cellular, Inc.
2. I am familiar with the facts contained in the foregoing Request for Waiver of the Commission's Phase II E911 Rules, and I verify that those facts are true and correct to the best of my knowledge and belief, except that I do not and need not attest to those facts which are subject to official notice by the Commission.

_____/s/_____
Larry Eisenbrey
September 5, 2003